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Sent via E-Mail
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May 12, 2011

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: **April 22, 2011, Third Staff Draft Delta Plan**

Dear Chairman Eisenberg and Council Members:

The California Farm Bureau Federation is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 76,500 agricultural and associate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau respectfully submits the attached line-by-line and section-by-section comments on the Delta Stewardship Council's ("Council") April 22, 2011Third Staff Draft Delta Plan ("Third Draft Plan").

While the overall organization and quality of the Third Draft shows significant improvement over the First and Second Drafts, Farm Bureau remains generally concerned that the Council's Draft Plan continues to overreach the Council's statutory charge. In addition to the attached detailed comments, many concerns shared by Farm Bureau were voiced in a recent letter to the Council from a broad coalition water and business interests dated May 6, 2011.

We remain hopeful that a number of currently unacceptable proposals included in the Third Draft can be corrected and resolved in the critically important Fourth Draft Delta Plan that we understand will serve as the basis for the Council's EIR/EIS.

Thank you again for opportunity to comment.

Sincerely,

Justin E. Fredrickson
Environmental Policy Analyst

JEF/dkc

10:15-25	Regarding reduced reliability of Delta exports, include information on CVP exports and not only on SWP. Perhaps explain the implications of these year-to-year fluctuations in CVP and SWP exports in terms of the agriculture located in areas of the State South of the Delta, the impact on groundwater, regional self-reliance efforts, water rates and the state's economy (including the construction industry), etc.
10:26-29	We suggest some additional content/clarification along the lines of the following: "Significant obstacles exist to achieving statewide water supply reliability. California's water managers *have reasonable estimates of statewide water use, but* do not know *through direct measurement or reporting precisely* how much water is being used on an annual basis. *A significant step forward was taken in this regard, with the Legislature's enactment as part of the 2009 Delta Package of a law requiring comprehensive filing of annual statements of diversion. Implementation of this legislation, however, is just beginning and many uncertainties in terms of statewide patterns of water use remain.* Since 1914, the State Water Resources Control Board has issued permits to water diverters within the Delta. *Because many original water rights in the Delta were "pre-1914" rights or presumed riparian rights not subject to state permitting requirements, the basis for an undetermined number of in-Delta diversions is uncertain. While in-Delta diversions have remained static as around _____ since _____, upstream use in the Delta watershed and Delta exports have significantly increased during that time, an historic lack of comprehensive statewide water diversion reporting has led to a lack of readily available information regarding the precise timing and amounts of many in-Delta diversions.*
10:35-39	Regarding the "increasing volatility of the Delta's water supplies due to climate change, including shifting seasonal precipitation and runoff patterns," some supporting graphics, citations, or reference to some other means of objective verification would be helpful to corroborate the factual veracity of these statements.
	Agricultural practices on some Delta islands (especially in the Central and Western Delta) have led *over time* to *localized* subsidence of up to 25 feet below sea level.~~, creating tremendous~~ *In places where deep subsidence has occurred in close proximity to levees, this has created increased pressure on levees that now* act as dikes,~~ to hold~~holding back water constantly rather than only during peak flow periods. *Contributing to this problem, routine dredging in the Delta that would historically have reduced the differential between subsided ground on the land side of the levees and water levels in adjacent channels has decline sharply. This has exacerbated flood risks to the extent that in-channel accumulation of sediment over the last few decades*

	has likely occurred significantly faster than natural subsidence of peat soils on adjacent Delta islands. Moreover, it has resulted in an almost total loss of what was once an abundant, inexpensive, and readily available source of dredging spoils with which to maintain and improve levees. As a result, t~~T~~he cost*, as well as the regulatory and logistical complexity* of maintaining or improving levees in the Delta *has increased greatly. Because most Delta islands are currently farmed, when vulnerable levees fail, in part due to the increased expense of maintaining and improving those levees, the cost of "reclaiming" these islands*~~, the cost of is~~ sometimes *exceeds the appraised* ~~more than the~~ value*, including improvements, as well as the income generating capability* ~~of the use~~ of the land. *Abandoned islands such as Franks Tract, Big Break, and Sherman Lake are converted into vast open-water areas, favored by anglers and recreational boaters, but also prone to colonization by invasive species, including the invasive clam Corbula amurensis and the sediment-trapping aquatic weed, Egeria densa. This in turn creates habitat conditions that favor invasive fish, organisms, and plant species that generally harm protected native species by altering the foodweb, reducing natural turbidity, and increasing predation.*
11:2-6	Please considering adding a sentence to end of the paragraph and the additional text in italics as follows: "The Delta Plan must achieve the coequal goals and inherent objectives in the fact of dramatically changing conditions. The Delta of 2100 likely will be very different from the Delta of today. Some of the changes will be intentional or predictable; others will be unintended and surprising. Changes will result from population growth, climate change and sea level rise, land subsidence, *probable new introductions of invasive species, possible extinctions,* and seismicity—most beyond human ability or willingness to control. *In addition, human-engineered changes may significantly change the Delta landscape and hydroscape. These include floodplain development, farmland conversion, large-scale habitat restoration, and changes in the timing, volumes, and quality of water present in the Delta.*
11:16	Table 1-1: We suggest the following additions: 1st column, 2nd row, "San Francisco Bay/East Bay area earthquake *potentially* affected Delta by 2032"; 2nd column, 3rd row, "In range of 200% increase (assumes no additional levee improvement, *no channel dredging, and no net change in peak volumes of Delta inflow*)"; 2nd column, 4th row, "In range of 450% increase (assumes no additional levee improvement, *no channel dredging, and no net change in peak volumes of Delta inflow*)." <u>Rationale</u>: In terms of high water, while one option is to raise levees, another is to deepen the bottoms of the adjacent channels. Historically, these two options had always gone together. Reestablishing this synergy could provide many flood control benefits and management tools that are generally not

	available for management of flood risks and potential future change in the Delta. This is a simple option that is within the State's control and that could dramatically expand the range of the options currently available in the Delta. Improved management and possible expansion of existing or additional of new storage capacity upstream are additional options.
11:23-12:4	Please consider the following additions: "The coequal goals of restoring the Delta ecosystem and providing a more reliable water supply for *all regions of* California are the foundation of all State water management policies. No water rights decisions or water contracts that directly or indirectly impact the Delta *and its watershed* are made without consideration of the coequal goals. *Over time, balanced application of [t]*~~T~~he ~~P~~public ~~T~~trust ~~D~~doctrine and California's Constitutional Article 10, Section 2 requirements for beneficial use, reasonable water use, and no waste ~~are fully enforced~~*have produced maximal optimization of water use, including high levels of water efficiency and protection of public trust resources throughout the state."* Rationale: The public trust and reasonable use doctrines are not so much something that can be "fully enforced" as "applied over time," hopefully leading to something resembling statewide maximal optimization of water use based on the implicit concept of necessary "balancing" among the different competing demands for water throughout the state..
12:11	Water is the source of the "50 percent" *per capita* reduction by 2100 number? Is there a consensus that this is actually achievable? Also, how is the Delta Plan defining "*per capita* reduction"? The meaning of this term has been a subject of much debate and is not yet completely resolved. Before the Delta Plan commits to a hard number such as 50 percent, perhaps the Council should endeavor to better define what this means and also seek meaningful feedback on the subject from a range of interests to better inform the Plan's framing of this particular "outcome"—alternately, and perhaps more appropriately, the Council could defer to other processes, agencies, and *fora* where efforts to better define and clarify such concepts are already underway (both regionally and at the statewide level).
12:22-24	We suggest the following additions: "Actions have been taken to ensure that sufficient freshwater flows following a more natural hydrograph are now dedicated to support a healthy ecosystem*, and physical systems and management approaches for human uses of water have been modified to accommodate and mitigate any adverse impacts of these changes to the maximum extent possible."* Rationale: While the notion of reoperating our systems to reestablish something more closely approximating the natural hydrograph is often repeated, the reality is that our existing water infrastructure and many of the

	existing uses in that system are based on a completely different type of management—namely, a system designed to capture and store water in the winter and spring, for use over the summer, into the next water year. Most of our existing systems are designed to match this relatively uniform year-to-year pattern of use. Unless the system is modified to capture and retain more water during times of greater surplus and/or move it to places where it can be more reliably drawn upon later on, it will be difficult to avoid the necessity of continuing to operate our existing infrastructure opportunistically year-to-year, for the purpose of capturing as much water as possible in *every* year, at times when runoff occurs naturally in *any* year. Thus, paradoxically, improving flow conditions for fish across *all* years in fact requires significant expansion of the system's capacity for purposes of optimally timing the maximal capture, storage, and conveyance of *a portion* of the large surplus flows that recur, periodically and fairly consistently, in only *some* years. Surplus water laid in in wetter years can then be drawn upon more reliably through drier years, thus freeing up more water for other environmental and species conservation purposes, without undue adverse impacts to human uses of water during these same drier periods. Unfortunately, without such system improvements, California's water situation is largely a "zero sum" game. On one hand, it is quite possible that a portion of water might be reprioritized from one use to another *without* any significant replumbing of our system. More likely than not, however, the outcome of a "zero sum" scenario of this nature is not a return a significantly better situation for fish, but rather a patchwork of half measures that severely hobbles one set of uses, unleashing a chain reaction of unacceptable social and economic ripple effects, while at the same time perhaps accomplishing little for the environment and the species we aim to protect either. What is needed instead is a major strategic revamping of the system that enables water managers to take maximal advantage of nature's bounty at the times when the ecological consequences of doing so are least pronounced, so that these same managers can at other times to reserve and rededicate to nature a more ample portion of the water thus saved in times of relative plenty.
12:27-32	We suggest the following additions: "Delta agriculture remains and *will* remain an important and dynamic part of the Delta. *In addition to traditional agricultural pursuits that will likely continue to dominate much of the Delta landscape, new frontiers in terms of environmental stewardship and mixed agricultural and environmental innovation may include development of new markets and technologies to* ~~adapting and improving through new technologies that~~sustain *and rebuild* Delta soils, enhance wildlife, and improve air and water quality. Visitors from around the world are drawn to the Delta for recreation and to experience its beauty, ecosystem, and agricultural bounty. The Delta is a place where agricultural, recreational, and environmental uses are uniquely integrated and continue to contribute *in important ways* to the regional economy."

13:6-17	Aside from their division into symmetrical 25-year chunks, these chronological check-in points (2025, 2050, and 2100) are more or less arbitrary and, objectively, add little of value to the Draft Plan at this point. To say simply that this is the initial 5-year plan and that the Plan will be updated hereafter at least every 5 years, and then to describe what the strategy in this plan for the first five years will be, is perhaps all that is needed. Rather than the imaginary contours of a long-term timetable that inevitably change, it would be more useful to understand how this Plan will relate to other obvious things on the near- to late-near-term horizon, including the BDCP schedule and deliverables, any planned activities of the State Water Resources Control Board, the Central Valley Flood Plan, completion of the CALFED storage investigations, the OCAP biological opinions including the recent remand of the Fish and Wildlife Service's biological opinion for the delta smelt, a possible Water Bond, implementation of the State's 20x2020 initiative, implementation of various other aspects of the Delta Reform Act (including statements of diversion, groundwater reporting, agricultural and urban water management plans), and any early implementation habitat activities in the Bypass, in Suisun Marsh.
13:31-35	Regarding the "Geographic Scope and Use of the Delta Plan," this section lists various code sections purportedly related to the Plan's assumed competence and responsibility to "address certain statewide water issues that are vital to sustainable management of the Delta" (Water Code sections 85020(a), (d), (f), and (h), 85302(b), 85303, 85304, 85307(a)). Reviewing these sections of the Code, it is notable that in several of these areas (e.g., "statewide water conservation, water efficiency, and sustainable water use," "ecosystem projects outside of the Delta," water conveyance and storage, and actions outside of the Delta to reduce flood risks in the Delta, etc.) the key operative words are *not* "mandate," "direct," "enforce," or "implement," but rather "promote," "recommend," "identify," etc.
16:16-31	Regarding the Stewardship's potential incorporation and possible appellate review of an eventual completed BDCP, if either or both possibilities are anticipated to be plausible scenarios, then knowing how the Council would likely apply the criteria included in the Reform Act as to the BDCP, and working *now* to ensure that the BDCP ultimately satisfies these criteria would seem to be very important. There is simply too much at stake in the Delta Plan to rely on the BDCP and yet take no prudent steps to ensure that the BDCP is on track with the Delta Plan and the Delta Plan on track with the BDCP. While there is a range of differing opinions on the BDCP itself, it is difficult to deny that the BDCP is currently *the premier effort* of the State and of various other key interests on the Delta today. Thus, for the time being at least, the BDCP has captured the interest and support of an apparent "critical mass" of statewide actors, and is currently *the* primary venue in which the

	talents and energies of these various agencies and interests are being focused. In the absence of a good certainty that the BDCP will complement and correspond to the needs of the Delta Plan (including fulfillment of the "co-equal" goals, protection of the Delta as an evolving place, etc.), it would seem that the Stewardship Council requires some credible "Plan B." At this point, it does not appear that there is any credible "Plan B" other than a default "No Action" alternative. The "No Action" alternative, however, is the *status quo*, whereas it appears that interests on virtually all sides now agree that the *status quo* is inadequate to meet the challenges of the next 100 years. The basic concern here is that it has been less than clear that there has been any close coordination between the BDCP and Stewardship Council to date. This potentially leaves a huge hole of uncertainty, with nothing but the BDCP to fill that void in the event the BDCP were, for some reason, found to be inconsistent with the Delta Plan (or the Delta Plan to be inconsistent with BDCP). While we realize this is a difficult and complex dilemma, it is a dilemma that needs much greater resolution going forward. Either there is a need for much greater integration of the BDCP and the Delta Plan, or the Delta Plan needs a credible "Plan B." Since there does not at this time appear to be any credible "Plan B" forthcoming, this heightens the importance of the need for action to ensure closer coordination and consistency between the Delta Plan and the BDCP.
35:5-13	This portion of the draft plan appears for the first time to evidence something akin to a reasonable conception of the proper scope and reach of the Stewardship Council's sphere of responsibility. Unfortunately, other portions of the Plan remain less than clear on this point. Still, this is portion of the text amounts to significant progress and, hopefully, other portions of the text can now begin to be revisited and revised to achieve greater consistency with the general concept here described.
36:4-7	The mandate to develop a governance structure to ensure federal consistency with the state Delta Plan, either in accordance with the Coastal Zone Management Act or some "equivalent" mechanism, is a requirement that is included in the Delta Reform Act legislation, but that has also been little discussed to date. Nonetheless, this is an enormously important concern from a property rights and land use perspective. Our view and, we suspect, the view of many in and around the periphery of the Delta would be that the Council should here eschew any ambition to replicate in the Delta anything resembling the expansive regulatory and land use authorities of the California Coastal Commission. Such expansive authority is unnecessary to achieve the relatively narrow state objectives of the Delta Plan in the Delta. Moreover, an overweening assertion this kind would needlessly stoke local opposition in the Delta around what is already an exceedingly difficult and controversial undertaking. In this regard, we strongly recommend against a CZMA or equivalent governance structure that would add another cumbersome layer of

	government, bureaucracy, and regulation, or that would unnecessarily intrude upon local land use matters and private property rights. The sole purpose of any such plan should be to provide a federal governance structure within which the parallel efforts of the state's federal partners in the Delta might nest, for purposes of generally staging and coordinating the various federal efforts consistent with the State's Delta Plan.
36:11-13	This statement, though apparently calculated to be reassuring, at the same raises the unpleasant specter of possible condemnation of private land for purposes of plan implementation. AS the Council no doubt aware, this is an extremely sensitive topic and an area in which it would behoove the state to leave as little room for speculation as possible. It is important to know generally where, if ever, for what purposes, and under what circumstances the State might contemplate utilizing its eminent domain powers in the Delta. If the basic assumption is "willing sellers, willing buyers," then it is important to unequivocally state this to be the case. If there are exceptions to this general rule, then is again important to specifically clarify the circumstances under which any such exceptions might apply, to what extent, and with what frequency. Clear answers to these questions are very important because they have significant potential, for many entities and individuals, to significantly alter the relative level of support for the plan that will be ultimately possible. Moreover, the sensitive issue of potential land condemnation is a policy issue of great importance as it relates to the Delta Plan's relative prospects of success.
37-38	The concrete, "nuts-and-bolts" quality of this section describing the process and specific criteria for determining whether a project *is* or *is not* a project is refreshing and informative. More of the content of the Plan should like this.
37:7-8	The Draft Plan states, "A proposed plan, program or project must be covered by one or more provisions of the Delta Plan meaning that a *regulatory policy* is applicable to the proposed action." The meaning of the term "regulatory policy" is not here adequately defined. Specifically, what aspects of the Delta Plan would be considered "regulatory policies" that might trigger classification of a project as a "covered activity"? Without specific definition, the term "regulatory policy" is far too broad.
39:17-18	Many potential "covered activities" will likely *not* be activities which would require consideration of "best available science" or "adaptive management" (i.e., a residential subdivision by a private developer vs. a tidal marsh restoration project by the Delta Conservancy). Accordingly, it seems likely that this criterion would not apply in many cases. Also, it is not clear why ensuring that a project "comply[] with all relevant laws" should be the province of the Delta Stewardship, unless this means *only* those laws which may be "relevant" to the objectives of the Delta Plan and achievement of the

	co-equal goals. Of course, there is no need for the Stewardship Council to put itself in the position of a self-appointed legal and regulatory clearinghouse, policing across-the-board legal and regulatory compliance of every project it reviews, whether such compliance may have no bearing whatsoever on achievement of the core goals of the Delta Plan itself. Also, it is potential important to clarify that the proper standard for the Stewardship Council's review of the *consistency* of possible "covered actions" in the Delta with the Delta Plan itself is presumably *not* that such actions must necessarily have, as an express or implied objective of the project itself, a goal of in some way *helping* the Delta Plan; rather, in many, if not most cases, the more appropriate criterion should be whether a proposed project is, in some way, *incompatible* or *contrary* to the core purposes of the Delta Plan. Obviously, the purpose of the Council's "consistency" authority is *not* to conscript every project proposed in the Delta into the Council's cause of pursuing the unique objectives of the Delta Plan; rather, the Council's purpose should be only to ensure that activities that must occur in the Delta *regardless and perhaps even in spite of the Plan*, merely do not *foreclose* or *unduly interfere* with some *compelling interest* of the state in the Delta. If a project has no such effect, then the Council should have no quarrel with the project, and no reason to assert its jurisdiction over such project, or condition or limit the project in any way.
39:36-37	Suggested addition: "1. *Where relevant to the purpose and nature of the project,* [a]~~A~~ll covered actions must be base on best available science."
39:38-39	Suggested addition: "2. *Where revelant to the achieving the goals of the Delta Plan,* [a]~~A~~ll covered actions must demonstrate managerial and financial capacity to implement the covered action over the long term."
41:4-6	The Draft Plan states, "A public list of policies and plans determined to be consistent and not consistent with the Act shall be maintained on the Council website and included in reports of the Council on its effectiveness in implementing the Act." Does such a list exist? Is one being developed? What is the process by means which this list will be developed (if this has not, in fact, occurred already) and how will it involve and incorporate input from stakeholders, including especially local governments and other agencies, entities, or person who may, in the future, propose, approve, seek approvals for, or carry out projects that may in some way trigger the Delta Plan "covered activity" and "consistency determination" requirements?
47:15-21	Meaning of the phrase "significantly caused" vague and unclear.
47:14	The proposed "Water Sustainability Element" concept is not currently, to our

through 48:38	knowledge, a required component of an integrated regional water management plan. Accordingly, a requirement for inclusion of such an element in an integrated regional water plan with regulatory effect would apparently require new legislation. Integrated water management plans have traditionally been used, with considerable success, as voluntary regional water planning tools, linked to certain funding incentives. They have not been used, nor are they intended to be used as a basis for regulatory action—much less as a tool to limit or condition water diversions or exports out of the Delta or the Delta watershed. Integrated regional water management plans have never given any agency authority to dictate to a local water agency and its ratepayers how they must structure their local water pricing. Furthermore, the Council's "out-of-balance" concept of a "long term sustainability" determination, and "requirement for the implementation of local and regional programs and projects that will achieve regional water balance within the twenty year planning horizon," is a concept that neither the Stewardship Council, nor any other agency currently has any authority to advance outside of the legislative process. As to the notion of conditioning deliveries of "water diverted or exported from the Delta or the Delta watershed," or activities involving the "export of water out of the Delta," or "the transfer of water through the Delta," section 85057.5 identifies as activities that are specifically exempt from the Delta Plan's "covered activity" and "consistency determination" requirements (1) "regulatory actions of a state agency" (such as issuance of a water rights permit or license, approval of a change in point of diversion, or implementation of the State Water Resource Control Board's Bay-Delta Water Quality Control Board), (2) "[r]outine maintenance and operation of the State Water Project or the federal Central Valley Project," and (3) "[r]outine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency." Sections 85031 and 85082 of the Water Code specifically clarify that nothing in the Delta Reform Act of 2009 is intended, in any way, to supersede, modify, or otherwise affect any of a variety of existing laws as administered by the agencies of competent jurisdiction, including existing water rights, area-of-origin protections, and any "existing legal protections, [either] procedural [or] substantive, relating to the state board's regulation of diversion and use of water, including, but not limited to, water right priorities." All of these considerations place considerable constraints on the practicability and legality of many of regulatory and non-regulatory proposals on pages 47 and 48 of the Draft Plan.
49:14-29	This section takes issue with what the Draft decries in somewhat derogatory terms as the "political" nature of legally required regulatory processes and proceedings before the State Water Resources Control Board. The drafters' evidence of this phenomenon is, apparently, the fact that the Board has not yet cancelled all water rights and effected a wholesale reallocation of water from existing consumptive uses to the "instream" uses the drafters appear to

	favor (without any basis in the law) as the highest and best use of water in the state. This, however, is like saying that, because the Water Board's process has not yet resulted in a preferred allocation of a disproportionate amount of water to *any* single purpose at the expense of all other competing uses, that that system is therefore overly "political," given to vexing "battles among competing interests," fatally flawed and in need of radical reform. In fact, what the lack of complete dominance by any one particular use over all others may evidence is not any gross failure of the system, but rather that the system of inherent checks and balances that we call due process of law works more or less as it was intended to work. Another apparent bias or fallacy in this section is the apparent assumption that achievement of the co-equal goals will necessarily take the form of a complete reprioritization and subordination of existing beneficial uses (exports, upstream, and in-Delta) to the drafters' preferred "instream" uses of water. In arguing for such an outcome, the drafters liberally invoke the public trust doctrine and the reasonable use doctrine. Once again, however, this conception appears to ignore that the public trust doctrine itself requires a *balancing* of *feasible* protections for public trust resources against all other competing uses of water. So-called "enforcement" of the public trust doctrine (as opposed to case-by-case application of the legal doctrine) is not an absolute, unqualified proposition and it is not a *carte blanche* extra-constitutional license to take water other uses without just compensation. Similarly, the drafters appear to overlook the implicit limitation of the reasonable use doctrine that that doctrine in fact applies to *all* uses of water—consumptive or instream.
49:36-41	The text here misstates the purpose and context of the State Water Resources Control Board's "Delta flow criteria" recommendations of 2010 and its on-going update of update of the Water Quality Control Plan. Whereas the latter involves a balancing of *all* beneficial uses, the former focused exclusively on providing a rough estimate of the possible instream-flow requirements for the "protection of public trust resources" in the Delta. The "flow criteria" process was a non-regulatory study, required by the Delta Reform Act of 2009, that focused on a single objective. The study deliberately included no "balancing" of public trust requirements against other beneficial uses of water and no consideration of water rights priorities or public trust resources upstream of the Delta, etc. The relevant legislation specifically states that the sole purpose of the "flow criteria" recommendations was to "inform" the Delta Plan and the Bay-Delta Conservation Plan; moreover, legislation clarified that the Water Board's flow criteria were to have no "predecisional" or regulatory effect. The current text mischaracterizes the limited purpose of the study and confuses it with the Water Board's much lengthier, more complex, and legally binding regulatory process for the review and revision

	of existing water quality objectives. Minor inaccuracies and inadvertent misstatements of fact or law in the Delta Plan are inevitable and excusable. Gross inaccuracies and misstatements are not. The inaccuracies in this portion of the draft text, with regard to the purpose and effect of the Water Board's 2010 "flow criteria" recommendations, amount to "gross inaccuracies and misstatements" and must be corrected or otherwise run the risk of undermining the credibility, integrity, and legal defensibility of the Plan.
50:8-29	The Council has no oversight or veto authority on the State Water Resources Control Board's administration of water rights and water quality and cannot fashion any such authority for itself where it has received none from the Legislature. If there is a compelling need to develop and adopt new flow objectives in the Delta or its watershed, this is a matter that lies entirely within the Water Board's jurisdiction, within the bounds of existing law, subject to the review of the courts. The Water Board is in fact already in the process of updating the existing Bay-Delta Water Quality Control Plan and has intimated its intent to continue along this path in this and future updates of the Plan, as required by law. This process is quite cumbersome, in part because of its tremendous complexity, but also because of the necessary due process protections that preclude the Water Board from simply rewriting standards in a legal, social, technical, and economic vacuum. The Council is free to articulate in its Plan what it believes to be the "critical path" for the State with respect to the Sacramento-San Joaquin River Delta, in terms of overall water resources management for the greater good of *all* Californians. It may also bring its existing authorities to bear in an effort to influence such an outcome. However, as an appointed, policy- and planning-oriented body, without broad quasi-adjudicatory or legislative powers in the field of statewide administration of water rights and water quality, the Council was never intended to function as the ultimate arbiter of such matters, above the State Water Resources Control Board, the Legislature, and the Courts.
50:30-51:29	This section describes a viable alternative to the single-objective management that is currently our only option. To the extent the existing system was designed in a different era, with a very different and more limited set of objectives, it is not surprising that that system is now unequal to the task of optimally satisfying all of the state's competing water demands. As mentioned above (See comment re: 12:22-24 *supra*), improving our existing conveyance and storage systems to better meet competing needs across years and seasons is an essential step if we as a State are ever to change the "zero-sum" nature of California's legendary water wars.
51:41-42	The historic magnitude of the groundwater overdraft situation in some areas of the state and the possible exacerbation of the situation in recent years highlights the extent to which a lack of reliable, adequate, and adequately

	timed deliveries of imported surface water to the deficit areas of the state can quickly translate into a steadily worsen groundwater picture. The solution to this problem is part improved local management and part water supply reliability. Without more reliable surface water deliveries, however, local management and long-sustainability will be difficult. At the same time, it is important to recognize that significant groundwater overdraft situations are limited and fairly narrowly circumscribed within just a few areas of the state. Recent erosion of the year-to-year reliability of the man-made systems that were meant to offset historic reliance on groundwater in these areas has caused an unfortunate reversion to this unbalanced situation of the past. The public's tendency to focus on the surface water side of water management conceals the interrelated groundwater portion of the equation. Past achievements in this area are a testament to the *feasibility* of managing the legacy problem of historic groundwater overdraft, even in the state's most severely impacted basins. Effective management, however, is not possible without reliable surface water deliveries to supplement local groundwater.
53:25-26	"[U]nregulated pumping and severe groundwater overdraft in some regions of California has created serious economic and environmental consequences." While there is some truth to the statement, it is also pertinent to point out that the "economic and environmental consequences" of a regulatory "hard landing" on groundwater would be far more dramatic than any of the economic and environmental consequences experienced to date from the existing problem of long-term groundwater overdraft itself. On the other hand, a continuation of the *status quo* could eventually end in a more gradual, but no less definitive decline in economic and environmental conditions over time. When speaking of the groundwater overdraft situation in California, there are several important points to bear in mind: First, it is important to recognize that the most severe and pronounced consequences of groundwater overdraft are limited just a handful of localized areas, and that these problems do not historically affect the whole of the Valley, as the current draft and number of other recent documents would suggest. (See, e.g., PPIC, the LAO, etc.) The USGS and NASA studies that the Draft Plan references bear this out and are an importance nuance to an issue that is too easily oversimplified. Second, it is important to recognize that much of historic decline in groundwater levels in these localized areas occurred prior to the start of surface water deliveries that *had* led to a "sustainable" management of groundwater levels in these areas *prio*r to the onset of the regulatory shortages of the last two to three decades. Third, "sustainable" management of groundwater in *all* areas of

	California *is* quite possible, but is likely *not* possible without reliable deliveries of supplemental surface water to the areas of the state that lack adequate local surface water and are thus forced to rely on local groundwater in the absence of adequate and reliable deliveries of imported surface water. As mentioned elsewhere herein, adequate surface water *can* be more reliably delivered to the deficit areas of the state if the state's water planners and users, supported by the State itself, develop a intelligent to plan of systematic improvement to modify our statewide delivery system to more efficiently capture, store, and transport water in times of surplus for subsequent use in times of scarcity. The Association of California Water Association's "Blueprint for California Water" plan available at http://www.acwa.com/spotlight/no-time-waste is an excellent, well-thought-out, comprehensive, and broadly supported vision of what such strategic improvements might look like. Farm Bureau recommends that the Blueprint as a potential companion plan for the Stewardship Council's for the water supply reliability component of its Delta Plan.
64:22-65:24	In several places, this portion of the Council's Third Draft Plan takes up the steady tattoo of a "more natural flow regime." What this means, however, is less than clear. The text on page 65, at lines 10 through 17, and on page 46, at lines 36 through 45, suggests that Council's concept of a "more natural flow regime" might resemble the State Water Resource Control Board's 2010 "Delta flow criteria recommendations." Here, however, it is pertinent to note that initial estimates of the water supply impacts of the Water Board's flow criteria recommendations strongly suggest that these criteria are in fact *infeasible* from a legal, social, and economic standpoint. Without major improvements to California's statewide storage and the water conveyance systems, even more modest alterations to more closely mimic "a more natural flow regime" could likely only come at tremendous social and economic cost to California. However, even the State Water Resources Control Board acknowledges that flows alone are not sufficient to recover native populations and the Delta ecosystem. In any case, with few or no guarantees as to the actual efficacy of a massive reallocation of California's water resources from existing beneficial uses to public trust resources, it is highly questionable whether the end could ever justify the means. The Draft is at least right to defer to the State Water Board on the matter of any future flow standards, as the Water Board's process at least requires legal due process and express consideration of impacts on competing beneficial uses and the public interest. However, until California has significantly increased the physical capacity of the state's water distribution system, the practical limitations on any plans to reestablish a "more natural flow regime" will likely to remain elusive. Major improvements in the area of storage and

	conveyance could make a closer approximation of natural flows more feasible. Until such improvements are made, however, such approximation of a "more natural flow regime" is not likely possible.
66:34-40	Here and elsewhere, the text echoes the often repeated notion that historic land reclamation and levee construction in the Delta are a major cause of the current ecosystem decline. What this theory consistently omits, however, is why native species coexisted and flourished for many decades *after* historic land reclamation of tidal marsh in the Delta. Here, it is commonly charged that increasing diversions and exports and declining water quality were the cause of these species declines. However, there is no actual fall-off point in terms of the historic trends here either. This would then tend to point to some other cause—and that cause is more than likely the introduction of various invasive species and the collapse of the Delta's foodweb in the mid-1980s. However, many experts acknowledge that there is little that we can do restore the Delta foodweb and the Delta ecosystem to its former state of relative biological purity. This then begs the question whether many of the flow and habitat restoration proposals we spend hours and years and entire careers discussing can in fact "turn back the clock"—or whether we have not entered an entirely new and different ecological regime from which there is no return. Ultimately, these are policy questions our generation or the next will eventually confront—or, at least, questions whose answers may become unavoidably obvious in a perhaps not too distant future. In the face of endless uncertainty perhaps the only certainty is that Nature will eventually resolve such questions with us or without us.
79:27-80:12	Regarding the Council's recommendations with respect to "variability salinity" it is difficult to divine exactly what the Council is recommending. This section of the Draft Plan describes the basic trade-off between agricultural and municipal water quality and "variable salinity," but continues in some vague way to suggest that greater "variability" is necessarily a *feasible*, a *legally defensible*, and a *desirable* thing, notwithstanding the acknowledged potential adverse effects on existing beneficial uses *other than* fish and wildlife. Also, while the general hypothesis that "variability salinity" would somehow enhance habitat conditions for native species, we are not aware of any empirical study or experiment to date that has actually tested this hypothesis. The idea is now and has for the last several years now been little more than a chalkboard sketch, unsupported by any hard science, not to mention any consideration of the implications of such a proposal in the larger context of relevant water rights and water quality laws, social and economic concerns, etc. The Draft seems to suggest that there is some way to potentially establish a significant range of interannual variability in Delta salinity while *still* protecting other beneficial uses in the area. In reality, of course, the two concepts are likely mutually exclusive. Moreover, the concept of a salty summer Delta is

	incompatible with current dual conveyance proposals that have identified as the best possible marrying of competing water supply, species protection, and water quality objectives. Thus, it is important to recognize that there is no possible "happy medium" here where, for example, salinity could be allowed in dry years to intrude deeply into the Central and South Delta in summer and fall without *destroying Delta agriculture*, as well as the municipal and industrial uses in the affected area. Since such a result is fundamentally inconsistent with the Council's charge to protect the co-equal goals while protecting and enhancing existing values in the Delta itself as an "evolving place," the proposal is therefore inconsistent with the objectives of the Delta Plan *on its face* and should in fact be dropped from the Plan entirely. In fact, quite sensibly, the Draft Plan recommends that the Council defer to the State Water Resources Control Board on the setting of Delta water quality objectives ("sensibly" and also unavoidably to the extent there is simply no other agency empowered to set water quality objectives in the Delta). If this is the case, however—and, if the Council knows that the Water Board cannot simply push aside all other beneficial uses in the Delta in headlong pursuit of an unproven hypothesis that postulates the mere possibility of some vague benefit to species—if both of these things are absolute known to Council it is then misleading and unproductive for the Council's Draft to suggest that such an outcome would be possible or appropriate in any way.
82:31	Use of "salinity variability" is an inappropriate "performance measure" at this point, even as a curiously intriguing proposal for discussion, since no one has yet decided that this is an actual feasible and socially, economically, or scientifically justified experiment that could ever be tested in the real-world laboratory of the Delta before it has yet been tested in an actual laboratory, not to mention the legal and regulatory venues where any potential benefits of such a variable salinity regime would have to be carefully weighed against all of the many social and economic factors such a proposal would imply. A time when "variability salinity" might be a possible option for the Delta is so remote and far removed from the current situation in the Delta as to render the proposal almost irrelevant. In the final analysis, there are *many* feasible things that can and should be done to help improve the Delta ecosystem before a something so radical and disruptive as "variable salinity" could ever properly be considered as a serious option for the Delta. Moreover, as mentioned above, such a proposal conflicts fundamentally with the Council's mandate to achieve the co-equal goals, while at the same time protecting and enhancing existing values in the Delta. Just the Council will presumably one day hold "covered actions" in the Delta to "consistency" with the Delta Plan, the Council must ensure that the Delta Plan itself is "consistent" with the Council's authorizing statutes. "Variable salinity" is fundamentally "inconsistent" with the express terms of the Delta Reform Act and so cannot remain as part of a final (or, properly, even a *draft*) Delta Plan.

87-97	While this should not be interpreted as a unqualified endorsement of the chapter its entirety, Chapter 7 of the Third Draft Plan has considerable coherence when compared to much of the rest of the Plan. At the same time, however, the significant land use and property rights implications associated with the Plan's proposal moratorium on "encroachments" in "potential floodways," particularly along the Lower San Joaquin River and in the South Delta. (See lines 14-20.) This and the proposed Delta Flood Management Assessment District are ideas that demand much additional vetting with local government and stakeholders before they can be even preliminarily included in the Delta Plan as actual proposals.
89:26-31	The Draft Plan's recommendation concerning the Army Corps of Engineer's "San Francisco Bay Long-term Management Strategy for Dredging and the Delta Dredged Sediment Long-Term Management Strategy" (or some equivalent effort) is a very sensible recommendation. As mentioned elsewhere herein, a long-term strategic dredging plan for the Bay-Delta is a critical piece of any effective, long-term flood reduction strategy for the Delta. A status update on this program from the Corps and an assessment of any means by which the Delta Plan might assist or make addition recommendations to expedite efforts in this area—including potential linkages to the Delta Plan's financing strategy—could be very useful to inform the Council's development of the Plan going forward.
92:28-38	The proposed policies outlining potential criteria for state investment in Delta levee improvements are likely to be overly narrow in scope. In particular, reduction of "risk of loss of life" as the *floor* for statement investment in Delta levees would appear to exclude the public value in property, infrastructure, and important economic values in the Delta. Moreover, taken literally, the proposed "loss of life" criterion would appear on its face to be at least a partial repudiation of the State's existing Delta Levees Subventions and Special Projects Programs (separately referenced in the interim financing recommendations on p. 112 of the Draft Plan). While reducing "risk of loss of life" is certainly *one* benefit associated with these important programs, the critical property, economic, water supply, water quality, and infrastructure-related benefits associated with these programs are perhaps their dominant feature. Yet to say that these programs target property, economic, and infrastructure-related protections in sparsely populated areas of the Delta as much or more than "loss of life," is hardly to say that they provide no benefits to the State. The point is that any proposed criteria for "state investment" in Delta levees must be broader and more flexible than a blanket policy endorsing expenditure of state monies *only* where the focus is on reducing "loss of life." A better statement of policy which might be used as guidance for development of a broader set of investment criteria is found at lines 20 through 21 in the paragraph immediately preceding the proposed "State investment" criteria at the bottom of the page. To wit, the text there

	states that, "Given the potential threats faced by Delta levees, risk must be reduced through a set of management policies that prioritize staregic and focused investments of resources into levees in a manner that best balances the multitude of uses in the Delta."
94:25-27	The effect of the federal government's sovereign immunity with respect to liability has manifested over the course of the twentieth century until now as a gradual shifting of the burden of levee maintenance and investment overwhelmingly on to the shoulders of local flood control agencies and state government. Quite predictably, an equivalent extension of absolute immunity to a cash-strapped state government would mean an eventual withdrawal of state involvement in the field of local levee assistance. This would leave already underfunded local agencies with the entire burden of levee maintenance at a time when various state and federal mandates are in fact placing *increased* demands on those same agencies. The only means of meeting these mandates would be to approve more residential and urban construction behind agricultural levees to fund necessary leves improvements—or, alternately, to preside passively and indifferently over the resulting slow decline and eventual failure of our existing infrastructure. From this standpoint, blanket immunity for the State, while fiscally attractive no doubt, would be morally and socially irresponsible. Some form of limited or capped liability might provide a better alternative to absolute unlimited liability. However, a complete withdrawal by the State from any share in the costs and risks of levee failure would breed complacency and eventually ripen into catastrophe.
95:36-38	The recommendation that state agencies to allow agricultural leases on publicly-owned Western Delta islands to lapse would seem to beg the question of what subsidence-reducing or -reversing uses might then replace the current agricultural uses of these lands and the revenue these uses currently generate. If the answer is tule farms and large-scale carbon sequestration, this would then beg the question of how much water such a use might consume—and where the State would obtain the water to maintain these uses, given the scarcity of available water resources in the State and the very high water duty potentially associated with may thousands of acres of wetlands. Moreover, until a viable carbon market can be developed in this area, the proposal raises the question of financing and who would pay for management of these wetlands.
102:1-14	The apparent decision to defer to the Delta Protection Commission, to the California Department of Food and Agriculture, and to Delta communities and farmers concerning the economic future of the region is, we believe, entirely appropriate. However, we are somewhat concerned that local plans that are not meaningfully integrated in the broader fabric of the State's Delta Plan may languish for want of reciprocal effort on the part of the State.

	Conversely, a State vision that does not support and purvey the essential ingredients of a robust and resilient Delta economy—or that works at cross-purposes with such local economic activity—will fail to achieve the Delta Reform Act's inherent goal of "protect[ing] and enhanc[ing] the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place."
102:16-25	Chapter 8 here references the Delta Investment Fund, noting that "the Legislature […] has yet to make appropriations to the fund." However, there is no corresponding policy or recommendation in the Finance chapter to outline a strategy to finance the Delta Investment Fund for the Legislature's intended purpose of "implementing the regional economic sustainability plan." To provide a balanced and complete finance strategy, the Council must close this gap.
104:13-20	In addition to the "Performance Measures" listed here, we recommend considering additional performance measures including (1) not only "acres of agriculture," but also "conversion of agricultural land in the Delta to other uses," and "acres remaining in agriculture"; (2) changes and trends in crop types; (3) overall levee integrity; (4) water quality trends, including particularly the long-term availability of fresh water for irrigation; (5) the geographic and topographic distribution of remaining agricultural lands over time in relation to water supplies of suitable quality and relative flood risks (including long-term risks potentially associated with deeply subsided Delta islands); (6) the availability of supporting industries and infrastructure to sustain Delta agricultural productivity and overall competitiveness within relevant domestic and international markets; (7) long-term trends in terms of the relative spatial fragmentation or cohesiveness and consolidation of agricultural lands in the Delta.
108:22-25	The problem with fees of the kind proposed in the Plan's Finance Chapter where the purpose of such fees is, essentially, to funnel money gathered from water users and local agencies into state coffers is, quite frankly, the State's abysmal track record on the delivery of solutions that can provide water users actual relief, and not merely guaranty them additional regulation, additional constraints, more meetings, reports, hearings, committees and panels, but no actual, tangible improvements in statewide water reliability. For any type of fee to ever become more palatable to the communities that would bear it, the fee structure and decision-making process and the control of any funds collected would need to afford the water users some form of regionally-balanced direct say and control over the prioritization of expenditures. It would also need to guarantee that money leaving local coffers and no longer then available for local projects and priorities would nonetheless yield some net benefit to make this sacrifice worthwhile. Where there are no such benefits (as might well be the case for water users in large swaths of the

	state), there is simply no justification for such a fee. Thus, fees cannot work without reasonable assurances as to corresponding benefits and at this point those assurances are completely lacking.
108:11-14	The notion that "stressors" and "beneficiaries" should pay has some intellectual appeal on its face but, to be implemented in an equitable manner, it seems likely that such an approach could quickly become very complicated in practice. This is so because, while the fees appear to propose across-the-board on all water users, the reality is that not all water users would be assured of receiving any benefit commensurate to the fees they would pay, and also that not all water users could equitably be assessed a uniform fee based environmental stressors, where different users in different system cause different levels of environmental harm. Considerations such as these are factors that make broad support from a diverse community of differently situated water users very difficult.
110:22-26	"The Council strongly supports completion of the Bay-Delta Conservation Plan. […] With the exception of Bay Delta Conservation Plan ongoing planning costs, which are to come from the water contractors, *it is not likely that many of the additional costs will occur prior to 2017*." What is the source of this very specific reference?
112:14-16	"The Legislature should allocate $50 million of Prop. 1E funds to the Department of Water Resources and direct the Department to begin the acquisition of land or easements for the proposed San Joaquin/South Delta Flood Plain." Does this refer to the Paradise Cut proposal? Aside from this proposal, we are not aware of any clearly defined and broadly supported "San Joaquin/South Delta Flood Plain" proposal.
112:27-30	If passed, a water bond could fund the Council's activities for a time, or a portion of the monies potential generated in the future from some more general fee could go to support activities of the Council. At this point, however, independent fee making authority for the Delta Stewardship Council in support of that body's activities is not justified.
114:14-17	*"Funding very large investments in new water supplies may exceed the capacity of current users given the economic returns they receive for water. […] Allowing reallocation of resources among users may be required for the long-term economic vitality of the State."* This statement highlights an important concern: That is, namely, the concern of a theoretical breaking point at which the cost of a conveyance facility

	estimated in the tens of billions of dollars might potentially outstrip the economic capacity of existing agricultural uses to bear that cost. The authors of the Public Policy Institute of California's latest Delta report touched on this issue and concluded that unrestricted water markets and a shift to higher value crops could correct this problem. There is, however, some point at which agricultural commodity markets for a limited number of the "high-value" specialty crops become saturated—and, at that point, today's "high value" crops become, potentially, less valuable. In any case, it is doubtful that the *entire* Valley could be converted so-called "higher value" crops, even assuming that commodity markets could absorb and avoid a potential glut. This could in turn create a highly uncertain future for so-called "lower value" farming operations in the Valley. The PPIC's solution here is that water markets would at this point allow the water in agricultural use to move to "higher-value" economic uses of water—which is to say, essentially, increasing urban demand. However, where a large part of the stated need for a large and very costly new conveyance facility is to allow existing agricultural uses in the Valley to continue, this then begs the question whether the proposed solution will in fact preserve Valley's agricultural economy—or whether it would not potentially price large segments of that economy out of the market. If there is any doubt as this question then, unless the State's long-term plan is to open the way for a transition away from agriculture to a large amount of new urban demand in the South State and Valley, it may be that a different type of facility could adequately serve the reasonable existing and future needs of urban water users in the South State, and that existing agricultural water needs might be met by means of some mix of potentially more cost-effective measures. While presumably, the water users who have pledged their support for a facility of the kind proposed, as well as a willingness to pay, have carefully weighed such risks and reached a decision that the selected course is an affordable one. Nonetheless the question remains a significant policy issue, with potential major implications, especially, for the future of the State of California's larger agricultural economy.